

CALIFORNIA STATE PERSONNEL BOARD MEETING

Sacramento, California

Public Session Location - Room 150

Closed Session Location - Room 141

MID-MONTH BOARD MEETING MINUTES

MAY 18, 1999

PUBLIC SESSION OF THE STATE PERSONNEL BOARD

1. ROLL CALL

BOARD MEMBERS PRESENT

Florence Bos, President
Richard Carpenter, Member
William Elkins, Member
Lorrie I. Ward, Member

2. REPORT OF THE EXECUTIVE OFFICER - Walter Vaughn

The Board was advised of the following:

- A. The Assembly budget subcommittee approved the State Personnel Board's budget as submitted. Funding for Finance letters will be added at a later date.
- B. Ethics training material will be available for State Personnel Board members and managers on the Internet by May 24, 1999.
- C. The State Personnel Board Executive Officer will address the California Association of Managers and Supervisors at their annual conference.

3. REPORT OF THE CHIEF COUNSEL - Elise Rose

The Chief Counsel reported on the following:

Reported Cases

California Teacher's Association v. State of California

- A. Last week, the California Supreme Court declared as unconstitutional a statute that required teachers who unsuccessfully appealed their dismissals and suspensions to a hearing before the Office of Administrative Hearings to pay the cost of the Administrative Law Judge. The state's interest, expressed as an interest in discouraging frivolous appeals, was deemed by the court to be insufficient to outweigh the employee's due process and constitutional right of access to a judicial or quasi-judicial forum for adjudication of deprivation of a property right.

Litigation

- A. State Personnel Board v. Department of Personnel Administration - The State Personnel Board filed its notice of appeal on May 13, 1999.
- B. Connerly v. State Personnel Board - The appellant's opening brief has been filed. The respondents' briefs are due June 7, 1999. The Community Colleges are requesting an extension of time for the filing of their brief on the grounds that they are moving their offices during the period that their brief would have to be filed.
- C. Kidd/Swiden v. State Personnel Board - A settlement conference was held before Judge Robie on May 12, 1999. The case did not settle, but a further conference was scheduled for June 21, 1999.
- D. Kimberly Bell v. State Personnel Board - The court has issued a remand order requiring the State Personnel Board to provide clarification of the decision it adopted in this case and ordering a return by May 19, 1999. A proposed resolution and decision has been mailed to you for your consideration.

- E. Randolph Luna v. State Personnel Board - The Superior Court has issued its judgment affirming the State Personnel Board's precedential decision in this case dealing with application of the diversion statutes.

Other

- A. The State Personnel Board has received petitions for rehearing in the appeals of Susan Alexander, Doris Jones and Jesse Brown, all precedential decisions dealing with medical issues. The petitions will be before the Board at its July 7-8, 1999 meeting.
- B. Mediation Services Provider Request for Proposals - Larry Hoover has been awarded the contract to continue to provide mediation services to the State Personnel Board under the State Employee Mediation Program.
- C. The State Personnel Board's Administrative Law Judge (ALJ) Conference is scheduled on June 23, 1999, in conjunction with the ALJs' participation in the U.C. Davis Extension class on Administrative Advocacy, which class is co-sponsored by the State Personnel Board.

4 REPORT ON LEGISLATION - Judy Balmain

The Board was advised of the following:

- A. Status of AB 688 (Steinberg) - Would require State Personnel Board review of personal service contracts with exceptions; is in Assembly Appropriations suspense file. State Personnel Board has an opposed unless amended position on the bill.
- B. Status of SB 1073 (Ortiz) - State Personnel Board sponsored omnibus bill; has passed to the Assembly.

The State Personnel Board voted on the following Legislative bills:

- A. AB 1399 (Wayne) as amended April 22, 1999 - Demonstration projects involving supervisory employees require written agreement with supervisory employee organizations. Neutral.
VOTE: Bos, Carpenter, Elkins, Ward - Aye.

- B. SB 48 (Sher) as amended April 22, 1999 - Allows appeal of denial for request of public records by a state or local agency to the Attorney General and/or Court, sets time frames and fines. Amendments remove the State Personnel Board's concerns. The State Personnel Board has a change of position from oppose unless amended to neutral.
VOTE: Bos, Carpenter, Elkins, Ward - Aye.

BOARD ACTIONS

5. STATE PERSONNEL BOARD SUMMARY MINUTES OF MAY 4-5, 1999

ACTION: Adopted on May 18, 1999.
VOTE: Bos, Carpenter, Elkins, Ward - Aye.

6. ADMINISTRATIVE LAW JUDGE CASES

On May 18, 1999, the Board adopted the following decisions presented by Elise Rose, Chief Counsel, California State Personnel Board.
VOTE: Bos, Carpenter, Elkins, Ward - Aye.

PETITION GRANTED

JAMES WOODS, CASE NO. 97-2634
Appeal from dismissal
Department of Transportation
ACTION: Dismissal Sustained

CHIEF COUNSEL

KYMBERLY BELL, CASE NO. 97-2067
Appeal from dismissal
California Highway Patrol
ACTION: In Compliance with Court Remand Order, Board Issued an Addendum to the Decision

PROPOSED DECISIONS

BEVAN CHILCOTT, CASE NO. 99-0746
Appeal from dismissal
Department of Transportation
ACTION: Sustaining Dismissal

FRANK DURANTE, CASE NO. 96-0689
Appeal from rejection
Department of Corrections
ACTION: Rejection Affirmed and Appeal Denied

JACK E. WILKINSON, M.D., CASE NO. 98-1452
Appeal from dismissal
Department of Corrections
ACTION: Dismissal Sustained

JESSE LOPEZ, JR., CASE NO. 98-4365
Appeal from dismissal
Department of Corrections
ACTION: Dismissal Modified to 1-year suspension

GARY D. HORI, CASE NO. 98-5009
Appeal from termination of Career Executive
Commission of State Mandates
ACTION: Proposed decision rejected by Board and remanded to
Administrative Law Judge

MICHAEL V. SAIZ, CASE NO. 99-0335
Appeal from 5-calendar day's suspension
Department of Health Services
ACTION: Suspension Sustained

DAVID B. PITTMAN, CASE NO. 99-0471
DAWN W. DEW, CASE NO. 99-0473
Appeals from 5 percent reductions in Salary for 6 months
Department of Corrections
ACTION: Reduction in Salary Revoked

JUAN C. CERVANTES, CASE NO. 99-0465
Appeal from 10 percent reduction in Salary for 6 months
Department of Corrections
ACTION: Reduction in Salary Revoked

PAMELA A. KING, CASE NO. 98-1586
Appeal from dismissal
Department of the Youth Authority
ACTION: Administrative Law Judge's proposed decision
rejected by Board. Board to decide case itself.

GARY QUIGGLE, CASE NO. 98-4465
Appeal from 10 working days suspension
Employment Development Department
ACTION: Suspension Sustained

GREG GARRETT, CASE NO. 99-0338
Appeal from 1-step reduction in salary for 2 months
Office of State Controller
ACTION: Reduction in Salary Revoked

PETITIONS FOR REHEARING

ROSE BRAVO, CASE NO. 98-1164
Appeal from constructive medical termination
California State University, Long Beach
ACTION: Petition for Rehearing Filed by Appellant Denied

ROSEMARY VAN DUSER, CASER NO. 98-1071
Appeal from dismissal
California State University, Long Beach
ACTION: Petition for Rehearing Filed by Appellant Denied

WINSTON C. NESBETH, CASE NO. 98-3748
Appeal from rejection
Department of Corrections
ACTION: Petition for Rehearing Filed by Appellant Denied

7. RESOLUTION RE NOTICE OF GOVERNMENT CODE SECTION 18671.1
EXTENSION.

ACTION: See pages 14-17.

8. MISCELLANEOUS APPEALS DIVISION CASES
(Discrimination Complaints, Withholds, Voided Appointments,
Rule 211 Appeals, Petitions for Rehearing)
On May 18, 1999, the Board adopted the following decisions
presented by Linda Brooks, Assistant Executive Officer,
California State Personnel Board.
VOTE: Bos, Carpenter, Elkins, Ward - Aye.

WITHHOLD CASES

- A. ROBERT P. FIELDS, Case No. 98-2321
Classification: Correctional Officer
ACTION: DENIED
- B. Withdrawn

- C. PIROUZ PRIOUZ-RAEY, Case No. 99-0390
Classification: Correctional Officer
ACTION: DENIED
- D. SCOTT D. RICHARDS, SR.; Case No. 98-5127
Classification: Cadet, California Highway Patrol
ACTION: DENIED
- E. BIRDIE LYNETTE SAMSON, Case No. 98-4216
Classification: Motor Vehicle Field Representative
ACTION: DISMISSED - Appellant did not confirm
appearance for scheduled hearing.

9. MEDICAL APPEALS

On May 18, 1999, the Board adopted the following decisions presented by Linda Brooks, Assistant Executive Officer, California State Personnel Board.

VOTE: Bos, Carpenter, Elkins, Ward - Aye.

- A. RICHARD GOLD, Case No. 98-4113
Classification: Youth Correctional Officer
ACTION: DENIED

10. REQUEST TO FILE CHARGES CASES

On May 18, 1999, the Board adopted the following decisions presented by Linda Brooks, Assistant Executive Officer, California State Personnel Board.

VOTE: Bos, Carpenter, Elkins, Ward - Aye.

- A. PETITIONER: CHRISTINE GALLAGHER - Case No. 98-3298, an employee of the California Department of Corrections.
Classification: Office Service Supervisor I
ACTION: DENIED
- B. PETITIONER: Donna Huff - Case No. 98-3968, an employee of the California Department of Corrections.
Classification: Materials and Stores Supervisor I
ACTION: DENIED
- C. PETITIONER: Lloyd B. Kennedy - Case Numbers. 98-3518 and 98-4581, an employee of the California Department of Corrections.
Classification: Lieutenant
ACTION: DENIED

11. NON-HEARING CALENDAR

On May 18, 1999, the Board adopted item "C". Items "A & B" were withdrawn and will be re-scheduled at a later Board date.

Item "C" was presented by Laura Aguilera, Chief, Personnel Resources and Innovation Division, California State Personnel Board.

VOTE: Bos, Carpenter, Elkins, Ward - Aye.

A. Withdrawn

B. Withdrawn

C. FORESTER I (NONSUPERVISORY)

FORESTER I (SUPERVISORY)

The Department of Forestry and Fire Protection proposes revisions to the minimum qualifications for the Forester I (Non-supervisory) and Forester I (Supervisory) classes

12. CAREER EXECUTIVE ASSIGNMENT (CEA) CATEGORY ACTIVITY

A. CEA POSITION ACTIONS CURRENTLY UNDER CONSIDERATION

(1) CHIEF, INFORMATION TECHNOLOGY BRANCH

CHIEF, FINANCIAL & MANAGEMENT SERVICES BRANCH

CHIEF, HUMAN RESOURCES & SUPPORT SERVICES BRANCH

The California Energy Commission proposes to allocate the above positions to the CEA category. The Department indicates that these positions will report to the Executive Directorate and will be responsible for developing, implementing and evaluating policies within their functional area of responsibility. Currently, the Administrative Services Division is comprised of the above three branches under the direction of a CEA 2. The Commission proposes to reorganize the division, remove the CEA 2 designation and create three distinct and separate branches, each with a CEA. (Board meeting of March 23, 1999.)

(2) CHIEF, BUSINESS SYSTEMS

CHIEF, TECHNOLOGY

The State Controller's Office proposes to allocate the above positions to the CEA category. The Department indicates that these positions will report to the Chief, Information Systems Division and will be responsible for setting policy within their functional area of responsibility. (Board meeting of March 23, 1999.)

- (3) CHIEF INFORMATION OFFICER
The Department of Finance proposes to allocate the above position to the CEA category. The Department indicates that this position will report to the Program Budget Manager and will be responsible for the recommendation and development of policies regarding the effective use of information technology in support of the Department's mission. (Board meeting of April 6 1999.)
- (4) DIRECTOR, DIVISION OF LEGAL SUPPORT AND TECHNOLOGY
The Department of Justice proposes to allocate the above position to the CEA category. The Department indicates that this position will report to the Chief Deputy, Administration and Policy and will serve as key policy maker in relation to computer technology issues for the Department. (Board meeting of April 6, 1999.)
- (5) PROGRAM MANAGER, HUMAN RESOURCES MANAGEMENT AND PAYROLL SYSTEMS
The Office of the State Controller proposes to allocate the above position to the CEA category. The Department indicates that this position will report to the Chief, Information Systems Division and will be responsible for policy decisions relative to the development, implementation and initial maintenance of the Human Resources Management and Payroll Systems. (Board meeting of April 6, 1999.)
- (6) DIRECTOR, STAFF PLANNING AND DEVELOPMENT
The Public Utilities Commission proposes to allocate the above position to the CEA category. The Department indicates that this position will report to the Executive Director and will be responsible for developing and implementing long-range strategic plans and policies in the areas of staff relations and development and Business Plan human resources objectives. (Board meeting of April 20, 1999.)
- (7) CHIEF INFORMATION OFFICER
The Student Aid Commission proposes to allocate the above position to the CEA category. The

Department indicates that this position will report to the Directorate and will be responsible for formulating the Department's information technology policy. (Board meeting of April 20, 1999.)

(8) CHIEF, FINANCIAL AND ACCOUNTING SERVICES

The Department of Veterans Affairs proposes to allocate the above position to the CEA category. The Department indicates that this position will report to the Deputy Secretary, Administration and will be responsible for the day-to-day administrative decisions and leadership in the areas of headquarters accounting, reimbursements, accounting systems, veterans home accounting and budgets including contracting. (Board meeting of April 20, 1999.)

(9) R STREET PROJECT MANAGER

The California Public Employees' Retirement System proposes to allocate the above position to the CEA category. The Department indicates that this position will report to the Chief Executive Officer and will be responsible for the recommendation and formulation of departmental policy, planning and program implementation for the R Street Project. (Board meeting of May 4, 1999.)

(10) CHIEF INFORMATION OFFICER

The Department of Motor Vehicles proposes to allocate the above position to the CEA category. The Department indicates that this position will report to the Directorate and will be responsible for developing the Department's long-term strategic vision and direction regarding information technology matters and will act as the principal advisor to the Directorate, the Business and Transportation Agency and the Administration on matters related to information technology programs. (Board meeting of May 4, 1999.)

B. CEA POSITION ACTIONS APPROVED BY DPA AND APPROVED OR DENIED BY SPB MANAGEMENT

(1) CHIEF, OFFICE OF COMPLIANCE ASSURANCE AND ENFORCEMENT

The Water Resources Control Board's proposed allocation of the above position to the CEA category has been approved.

(2) CHIEF OF LEGISLATION

The Department of Consumer Affairs (Medical Board of California) proposed allocation of the above position to the CEA category has been approved.

(3) MANAGER, LICENSING PROGRAM

The Department of Consumer Affairs (Medical Board of California) proposed allocation of the above position to the CEA category has been disapproved.

ACTION: Noted

A D J O U R N M E N T

SUBMITTED

1. JALAL EMAMI, CASE NO. 98-2116. Appeal from constructive medical termination. Department of Water Resources, (Oral argument held March 9, 1999.)

NO ACTION

2. RANDY HENDERSON, CASE NO. 97-1799. Appeal from dismissal. Department of the Youth Authority. (Oral argument held April 6, 1999.)

NO ACTION

3. CLADIS SILVIE, CASE NO. 98-2458. Appeal from dismissal. Department of Corrections. (Withdrawn as oral argument, written argument submitted to Board April 6, 1999.)

NO ACTION

4. YVONNE M. VILLANUAVA, CASE NO. 97-3061. Appeal from dismissal. Department of Corrections. (Oral argument held May 4, 1999.)

NO ACTION

5. DENNIS K. WILLIAMS, CASE NO. 98-2262. Appeal from rejection. Department of Rehabilitation. (Oral argument held May 4, 1999.)

NO ACTION

6. TODD SMITH, CASE NO. 97-22271. Appeal from dismissal. Department of Consumer Affairs. (Oral argument held May 4, 1999.)

NO ACTION

7. EDWARD KROHN, CASE NO. 98-4377. Appeal from 30 working days suspension. Department of Transportation. (Oral argument held May 5, 1999.)

NO ACTION

8. MARY CATHERINE GRAY, CASE NO. 98-0578. Appeal from dismissal. Department of Corrections. (Oral argument held May 5, 1999.)

NO ACTION

NOTICE OF GOVERNMENT CODE § 18671.1 RESOLUTION

Since Government Code section 18671.1 requires that cases pending before State Personnel Board Administrative Law Judges (ALJ's) be completed within six months or no later than 90 days after submission of a case, whichever is first, absent the publication of substantial reasons for needing an additional forty-five days, the Board hereby publishes its substantial reasons for the need for the forty-five day extension for some of the cases now pending before it for decision.

An additional forty-five days may be required in cases that require multiple days of hearings, that have been delayed by unusual circumstances, or that involve any delay generated by either party (including, but not limited to, submission of written briefs, requests for settlement conferences, continuances, discovery disputes, pre-hearing motions). In such cases, six months may be inadequate for the ALJ to hear the entire case, prepare a proposed decision containing the detailed factual and legal analysis required by law, and for the State Personnel Board to review the decision and adopt, modify or reject the proposed decision within the time limitations of the statute.

Therefore, at its next meeting, the Board will issue the attached resolution extending the time limitation by 45 days for all cases that meet the above criteria, and that have been before the Board for less than 6 months as of the date of the Board meeting.

GOVERNMENT CODE § 18671.1 RESOLUTION

WHEREAS, Section 18671.1 provides that, absent waiver by the appellant, the time period in which the Board must render its decision on a petition pending before it shall not exceed six months from the date the petition was filed or 90 days from the date of submission; and

WHEREAS, Section 18671.1 also provides for an extension of the time limitations by 45 additional days if the Board publishes substantial reasons for the need for the extension in its calendar prior to the conclusion of the six-month period; and

WHEREAS, the Agenda for the instant Board meeting included an item titled "Notice of Government Code § 18671.1 Resolution" which sets forth substantial reasons for utilizing that 45-day extension to extend the time to decide particular cases pending before the Board;

WHEREAS, there are currently pending before the Board cases that have required multiple days of hearing and/or that have been delayed by unusual circumstances or by acts or omissions of the parties themselves;

NOW, THEREFORE, BE IT RESOLVED AND ORDERED that the time limitations set forth in Government Code section 18671.1 are hereby extended an additional 45 days for all cases that have required multiple days of hearing or that have been delayed by acts or omissions of the parties or by unusual circumstances and that have been pending before the Board for less than six months as of the date this resolution is adopted.

* * * * *

MAY 18, 1999

I hereby certify that the State Personnel Board made and adopted the
Preceding resolution at its meeting on May 18, 1999.

WALTER VAUGHN
Executive Officer
California State Personnel Board

VOTE: Bos, Carpenter, Elkins, Ward - Aye.

CORRECTION

1. The Summary Minutes of May 4, 1999, inadvertently omitted the action for the following Proposed Decision:

HERBERT LEE ENGLISH, CASE NO. 98-1035
Appeal from 10 percent reduction in salary for 6 months
Department of the Youth Authority
ACTION: Reduction in salary sustained

2. The Summary Minutes of April 20, 1999, inadvertently showed an incorrect action for the following Rejected and Remanded Decision. The correct action is:

JOYCE MILAS, CASE NO. 98-3477
Appeal from automatic Resignation under SPB Rule 448
Employment Development Department
ACTION: Administrative Law Judge's proposed decision rejected by Board. Board to decide case itself